

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE SEPTEMBER 4, 2003

AMENDED IN SENATE JULY 17, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Diaz

(Principal coauthor: Senator Alarcon)

(Coauthor: Assembly Member Cohn)

(Coauthor: Senator Romero)

February 14, 2003

An act to add Article 3 (commencing with Section 89730) to Chapter 6 of Part 55 of, and to add Article 6 (commencing with Section 92060) to Chapter 1 of Part 57 of, the Education Code, and to amend Section 12100.5 of the Public Contract Code, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Diaz. Public postsecondary education: California State University: University of California: information technology projects.

(1) Existing law establishes the California State University and its various campuses under the administration of the Trustees of the

California State University. Existing law establishes the University of California and its various campuses under the administration of the Regents of the University of California.

This bill would enact a comprehensive statutory scheme relating to information technology projects of the California State University and information technology projects of the University of California that are funded with state moneys appropriated, on or after January 1, 2004, in the annual Budget Act or in another statute.

The bill would require any information technology project of the California State University, and any systemwide information technology project of the University of California that is funded with state moneys appropriated, on or after January 1, 2004, in the annual Budget Act or in another statute, as defined, that exceeds \$3,000,000 in direct or related costs to be overseen, from its inception through its implementation, by an independent auditor appointed by the Director of Finance. The bill would require a systemwide information technology project of either of these segments that is approved on or before June 30, 2009, and that exceeds \$20,000,000 in direct or indirect costs, to be submitted to the Governor for consideration and inclusion in the Governor's Budget, and would require the project to be reviewed through the annual budget process.

The bill would generally require the trustees and the regents to take systematic measures to analyze and justify the costs related to information technology projects to which this bill applies.

The bill would require the trustees and the regents, with respect to a project to which this bill applies, to disclose, prior to entering into a contract with any private vendor, any donations to the university, or to any of the campuses or auxiliary organizations of the university, made by that vendor for up to one year before the date on which the contract is to be executed.

The bill would require the trustees and the regents, with respect to projects to which this bill applies, to take prescribed actions to safeguard electronic records that contain confidential student information.

(2) Existing law generally requires that all state agency contracts for the acquisition of information technology goods or services, whether by lease or purchase, be made by or under the supervision of the Department of General Services. Existing law exempts the Trustees of the California State University, as well as the governing bodies of the other segments of public postsecondary education, from this



supervision, but also requires the trustees to develop policies and procedures, to be maintained in the state university administrative manual, that further the pertinent legislative policies for contracting, but that are without the involvement of the Director of Finance, the Director of General Services, the Department of Finance, or the Department of General Services.

This bill would instead require the trustees to develop these policies and procedures in conjunction with the Director of Finance and in consultation with the Legislative Analyst, or in conjunction with the Department of Finance and in consultation with the Legislative Analyst's Office.

(3) *This bill would not become operative unless and until SB 971 of the 2003–04 Regular Session is enacted and becomes operative.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The California State University (CSU) failed to conduct a
- 4 comprehensive systemwide cost/benefit or needs analysis prior to
- 5 implementing the multimillion dollar Common Management
- 6 System (CMS) computer data project.
- 7 (b) CSU failed to both establish a business plan or a systemwide
- 8 funding plan for CMS.
- 9 (c) CSU procured CMS-related vendor services using
- 10 sole-source contracts.
- 11 (d) CSU is funding the four hundred fifty million dollar
- 12 (\$450,000,000) CMS project with resources that could otherwise
- 13 be devoted to supporting classroom instruction, student services,
- 14 and libraries.
- 15 (e) CSU's flexible budget framework exempts it from many
- 16 legislative oversight mechanisms, and the CMS project was not
- 17 subject to the same legislative scrutiny other state information
- 18 technology projects undergo.
- 19 (f) CSU's flexible budgeting environment also allows it to
- 20 make expenditures that may be contrary to priorities established
- 21 by the Legislature.



SEC. 2. Article 3 (commencing with Section 89730) is added to Chapter 6 of Part 55 of the Education Code, to read:

Article 3. Information Technology

89730. (a) It is the intent of the Legislature to ensure that future information technology projects of the university are appropriate expenditures of state resources.

(b) (1) This article applies to, but is not necessarily limited to, any information technology project of the university that exceeds three million dollars (\$3,000,000) in direct or related costs. Any information technology project to which this article applies shall be overseen, from its inception through its implementation, by an independent auditor, to be appointed by the Director of Finance. The independent auditor shall ensure compliance with any applicable statutes, regulations, policies, or procedures adopted to oversee the information technology projects of the university.

(2) For any systemwide information technology project of the university that is approved by the trustees on or before June 30, 2009, and that exceeds twenty million dollars (\$20,000,000), in direct or related costs, the Department of Finance, upon approving an information technology project pursuant to this article, shall submit the project proposal to the Governor for consideration and inclusion in the Governor's Budget. An information technology project to which this paragraph applies shall be reviewed through the annual budget process by the Legislative Analyst's Office and the budget committees of the Legislature.

(3) As used in this subdivision, "systemwide" refers to information technology projects that are initiated at the systemwide level of the university. This article does not apply to information technology projects that are initiated at the campus level. The university may not avoid the requirements of this article by dividing a systemwide project into campus-level components.

(c) For the purposes of this section, the trustees shall accomplish both of the following:

(1) Conduct a feasibility study that includes, but is not necessarily limited to, all of the following:

(A) A description of the project.

(B) A clearly defined statement of the business problems or opportunities being addressed by the proposed project.

1 (C) An economic analysis of the cost of the proposed project,
2 as compared with the costs of the current method of operation.

3 (D) A statement of the specific functionality that is necessary
4 to achieve the documented needs of the university.

5 (E) Identification of the increased productivity of staff and
6 reduced operational costs that would be attributable to the project.

7 (2) Complete a cost-benefit analysis that includes, but is not
8 necessarily limited to, all of the following:

9 (A) The relative merits of the project, including, but not
10 necessarily limited to, compatibility with existing or future
11 systems or programs.

12 (B) Any projected cost, including in-kind costs, upgrades,
13 integrated costs, maintenance costs, schedules, capability or
14 performance constraints, and savings.

15 (C) Whether the new outsourcing project could be done by
16 current technical staff if they are provided with sufficient
17 additional training.

18 (D) All identified funding sources for the project, including
19 campus costs.

20 (E) Potential risks associated with the project, and a description
21 of any ongoing efforts to reduce risks. This part of the cost-benefit
22 analysis shall address protections, such as payment holdbacks and
23 performance bond requirements, to ensure that the development,
24 implementation, and integration of the project meets the project
25 specifications and goals; warranty provisions; liquidated damage
26 provisions; and letters of credit and other special insurance
27 requirements.

28 89731. Notwithstanding any other provision of law:

29 (a) No later than March 31, 2004, the Trustees of the California
30 State University shall adopt appropriate regulations, policies, and
31 procedures that are consistent with the 30 recommendations of
32 Report 2002-110, issued in March 2003 by the Bureau of State
33 Audits. The trustees shall continuously abide by, and enforce,
34 these regulations, policies, and procedures.

35 (b) If the independent auditor appointed pursuant to Section
36 89730 determines that the trustees are not in compliance with
37 subdivision (a), the information technology projects of the
38 university shall immediately be subject to the oversight authority
39 of the Department of General Services and the Department of
40 Finance. In the annual Governor's Budget, the Director of Finance

1 shall specify the projects that will continue to be subject to the
2 oversight authority of the Department of General Services and the
3 Department of Finance.

4 89733.7. To ensure that they use recommended practices in
5 procurement, the trustees shall evaluate sharing risks with vendors
6 and consultants during the project planning process, and shall
7 apply appropriate risk-sharing strategies when these are deemed
8 necessary in the feasibility study to ensure the long-term success
9 of the project.

10 89734.1. The trustees shall provide cost and progress reports
11 relating to the information technology projects to which this article
12 applies to the Director of Finance, the Legislative Analyst's
13 Office, and the chairs of the appropriate legislative policy and
14 fiscal committees. These reports shall be provided at least twice
15 during each fiscal year. The format and content of these reports
16 shall be determined by the Department of Finance.

17 89734.3. To ensure that potential conflicts of interest and
18 prohibited uses of nonpublic information are adequately
19 addressed, the trustees shall develop guidelines to ensure
20 compliance with Section 19990 of the Government Code.

21 89734.7. Prior to entering into a contract with any private
22 vendor, the trustees shall disclose any donations to the university,
23 or to any of the campuses or auxiliary organizations of the
24 university, made by that vendor for up to one year before the date
25 on which the contract is to be executed. The trustees shall also
26 disclose any donations to the university, or to its campuses or
27 auxiliary organizations, made by that vendor during the term of the
28 contract. The trustees shall provide reports to the Secretary of
29 State, the Director of Finance, and the Legislative Analyst's Office
30 with respect to these donations. These reports shall be provided at
31 least twice during each fiscal year.

32 89735.5. In order to ensure the privacy of student and
33 employee records, the university shall comply with all
34 requirements of the Information Practices Act of 1977 (Chapter 1
35 (commencing with Section 1798) of Title 1.8 of Part 4 of Division
36 3 of the Civil Code), with respect to persons involved in the design,
37 development, operation, disclosure, or maintenance of
38 electronically stored personnel records or confidential student
39 records, as well as with respect to any contractor and any employee
40 of a contractor with access to this information.



1 SEC. 3. Article 6 (commencing with Section 92060) is added
2 to Chapter 1 of Part 57 of the Education Code, to read:

3
4 Article 3. State-funded Information Technology Projects

5 92060. (a) It is the intent of the Legislature to ensure that
6 future information technology projects of the university that are
7 funded with state moneys are appropriate expenditures of state
8 resources.

9 (b) Notwithstanding any other provision of law:

10 (1) This article applies to any information technology project
11 of the university, any part of which is funded with state moneys
12 appropriated, on or after January 1, 2004, in the annual Budget Act
13 or in another statute, and that exceeds three million dollars
14 (\$3,000,000) in direct or related costs. Any information
15 technology project to which this article applies shall be overseen,
16 from its inception through its implementation, by an independent
17 auditor, to be appointed by the Director of Finance. The
18 independent auditor shall ensure compliance with any applicable
19 statutes, regulations, policies, or procedures adopted to oversee the
20 information technology projects of the university.

21 (2) For any systemwide information technology project of the
22 university that is approved by the regents on or before June 30,
23 2009, that exceeds twenty million dollars (\$20,000,000), in direct
24 or related costs, and any part of which is funded by state moneys
25 appropriated, on or after January 1, 2004, in the annual Budget Act
26 or in another statute, the Department of Finance, upon approving
27 an information technology project pursuant to this article, shall
28 submit the project proposal to the Governor for consideration and
29 inclusion in the Governor's Budget. An information technology
30 project to which this paragraph applies shall be reviewed through
31 the annual budget process by the Legislative Analyst's Office and
32 the budget committees of the Legislature.

33 (3) As used in this subdivision, "systemwide" refers to
34 information technology projects that are initiated at the
35 systemwide level of the university. This article does not apply to
36 information technology projects that are initiated at the campus
37 level. The university may not avoid the requirements of this article
38 by dividing a systemwide project into campus-level components.

39 (c) For the purposes of this section, the regents shall
40 accomplish both of the following:

1 (1) Conduct a feasibility study that includes, but is not
2 necessarily limited to, all of the following:

3 (A) A description of the project.

4 (B) A clearly defined statement of the business problems or
5 opportunities being addressed by the proposed project.

6 (C) An economic analysis of the cost of the proposed project,
7 as compared with the costs of the current method of operation.

8 (D) A statement of the specific functionality that is necessary
9 to achieve the documented needs of the university.

10 (E) Identification of the increased productivity of staff and
11 reduced operational costs that would be attributable to the project.

12 (2) Complete a cost-benefit analysis that includes, but is not
13 necessarily limited to, all of the following:

14 (A) The relative merits of the project, including, but not
15 necessarily limited to, compatibility with existing or future
16 systems or programs.

17 (B) Any projected cost, including in-kind costs, upgrades,
18 integrated costs, maintenance costs, schedules, capability or
19 performance constraints, and savings.

20 (C) Whether the new outsourcing project could be done by
21 current technical staff if they are provided with sufficient
22 additional training.

23 (D) All identified funding sources for the project, including
24 campus costs.

25 (E) Potential risks associated with the project, and a description
26 of any ongoing efforts to reduce risks. This part of the cost-benefit
27 analysis shall address protections, such as payment holdbacks and
28 performance bond requirements, to ensure that the development,
29 implementation, and integration of the project meets the project
30 specifications and goals; warranty provisions; liquidated damage
31 provisions; and letters of credit and other special insurance
32 requirements.

33 92060.5. Notwithstanding any other provision of law, no state
34 moneys appropriated on or after January 1, 2004, in the annual
35 Budget Act or in another statute, may be encumbered for a project
36 to which this article applies unless and until both of the following
37 conditions are met:

38 (a) No later than March 31, 2004, the regents adopt appropriate
39 regulations, policies, and procedures that they determine to be
40 consistent with the 30 recommendations of Report 2002–110,

1 issued, with respect to the California State University, in March
2 2003 by the Bureau of State Audits. The regents shall continuously
3 abide by, and enforce, these regulations, policies, and procedures
4 with respect to projects to which this article applies.

5 (b) If the independent auditor appointed pursuant to Section
6 92060 determines that the regents are not in compliance with
7 subdivision (a), the information technology projects of the
8 university to which this article applies shall immediately be
9 subject to the oversight authority of the Department of General
10 Services and the Department of Finance. In the annual Governor's
11 Budget, the Director of Finance shall specify the projects that will
12 continue to be subject to the oversight authority of the Department
13 of General Services and the Department of Finance.

14 92061. To ensure that they use recommended practices in
15 procurement for a project to which this article applies, the regents
16 shall evaluate sharing risks with vendors and consultants during
17 the planning process of a project to which this article applies, and
18 shall apply appropriate risk-sharing strategies when these are
19 deemed necessary in the feasibility study to ensure the long-term
20 success of a project to which this article applies.

21 92061.5. The regents shall provide cost and progress reports
22 relating to the information technology projects to which this article
23 applies to the Director of Finance, the Legislative Analyst's
24 Office, and the chairs of the appropriate legislative policy and
25 fiscal committees. These reports shall be provided at least twice
26 during each fiscal year. The format and content of these reports
27 shall be determined by the Department of Finance.

28 92062. To ensure that potential conflicts of interest and
29 prohibited uses of nonpublic information are adequately addressed
30 with respect to projects to which this article applies, the regents
31 shall develop guidelines for those projects that are consistent with
32 Section 19990 of the Government Code.

33 92062.5. Prior to entering into a contract with any private
34 vendor with respect to any project to which this article applies, the
35 regents shall disclose any donations to the university, or to any of
36 the campuses or other component entities of the university, made
37 by that vendor for up to one year before the date on which the
38 contract is to be executed. The regents shall also disclose any
39 donations to the university, or to its campuses or other component
40 entities, made by that vendor during the term of that contract. The

1 regents shall provide reports to the Secretary of State, the Director
2 of Finance, and the Legislative Analyst's Office with respect to
3 these donations. These reports shall be provided at least twice
4 during each fiscal year.

5 92063. In order to ensure the privacy of student and employee
6 records, the university shall comply with all requirements of the
7 Information Practices Act of 1977 (Chapter 1 (commencing with
8 Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code),
9 with respect to persons involved in the design, development,
10 operation, disclosure, or maintenance of electronically stored
11 personnel records or confidential student records in connection
12 with a project to which this article applies, as well as with respect
13 to any contractor and any employee of a contractor with access to
14 this information.

15 SEC. 4. Section 12100.5 of the Public Contract Code is
16 amended to read:

17 12100.5. (a) The Regents of the University of California, the
18 Trustees of the California State University, and the Board of
19 Governors of the California Community Colleges shall not be
20 subject to this chapter except as provided in subdivision (b).

21 (b) (1) The trustees shall develop policies and procedures in
22 the State University Administrative Manual that further the
23 legislative policies for contracting expressed in this chapter in
24 conjunction with the Director of Finance and in consultation with
25 the Legislative Analyst, or in conjunction with the Department of
26 Finance and in consultation with the Legislative Analyst's Office.

27 (2) The board of governors shall adopt policies and procedures
28 in its administrative manual that further the legislative policies for
29 contracting expressed in this chapter, but without the involvement
30 of the Director of Finance and the Director of General Services or
31 the Department of Finance and the Department of General
32 Services.

33 SEC. 5. *This act shall not become operative unless and until*
34 *Senate Bill 971 of the 2003–04 Regular Session is enacted and*
35 *becomes operative.*